

March 27, 2007

Daniel Mendez

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IN THE UNITED DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

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VISTO CORPORATION,

Plaintiff,

vs.

No. 2-05-CV-546-DJF

MICROSOFT CORPORATION,

Defendants.

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DEPOSITION OF DANIEL MENDEZ  
Palo Alto, California  
Tuesday, March 27, 2007

REPORTED BY:

LYNNE LEDANOIS

CSR No. 6811

Job No. 73677

COPY

March 27, 2007

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VISTO CORPORATION,

Plaintiff,

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No. 2-05-CV-546-DJF

MICROSOFT CORPORATION,

Defendants.

---

Deposition of DANIEL MENDEZ, taken on behalf  
of Defendant, at 201 Redwood Shores Parkway, Suite 500,  
Redwood Shores, California, beginning at 9:41 a.m., and  
ending at 6:54 p.m. on Tuesday, March 27, 2007, before  
LYNNE LEDANOIS, CSR 6811.

March 27, 2007

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17 VIDEOGRAPHER:

18 ESQUIRE DEPOSITION SERVICES

BY: MARTY MAJDOUB  
19  
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:52:35 1 system that we resolve the -- the problem of having this  
:52:42 2 access to the data outside the firewall, but also of the  
:52:46 3 synchronization of it so that the two workspaces that  
:52:49 4 you had would be maintained in the same coherent  
:52:54 5 fashion. Does that make sense? It's --

:52:57 6 Q I think so, but let's try to work through it in  
:53:00 7 a little more detail.

:53:01 8 A Yes.

:53:02 9 Q When you talk about "workspaces," what are you  
:53:04 10 referring to?

:53:05 11 A The data that you have in a -- in a  
:53:09 12 particular -- your -- your particular data that belongs  
: 15 13 to you or that you're working with.

:53:17 14 Q Like e-mail?

:53:18 15 A E-mail, your -- your pin data, your calendar,  
:53:23 16 your contacts, but also even beyond that, I mean, you  
:53:25 17 know, the -- all data in reality.

:53:30 18 One of the things that we realized is the fact  
:53:33 19 that once we had built this infrastructure and -- and  
:53:36 20 this conduit, basically, for exchanging and  
:53:45 21 synchronizing information that the type of the data  
:53:45 22 really becomes irrelevant in a way. I mean, e-mail is a  
:53:47 23 very important type of data, but there are other data  
:53:50 24 and -- and the techniques we were using could be applied  
:53:53 25 to any data, not only e-mail and pinned data, but CRM or

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0:01:46 1

the Internet, yes.

0:01:46 2

Q Okay. And -- and they would -- some of those would support the POP3 protocol; right?

0:01:47 3

0:01:50 4

A Yes.

0:01:50 5

Q And POP3 stands for Post Office Protocol 3; is that right?

0:01:56 6

0:01:56 7

A Yes.

0:01:57 8

Q And there were also clients that supported IMAP4 before you came up with your invention; is that right?

0:01:59 9

0:02:02 10

0:02:03 11

A I don't remember the -- I do remember POP3, I don't -- I'm not quite sure when -- when the -- the IMAP dates are.

0: 09 13

0:02:16 14

Q You're aware -- what is IMAP4?

0:02:21 15

A It's another protocol for e-mail access, kind of like a successor for POP3.

0:02:24 16

0:02:27 17

Q And it has -- it has more functionality than POP3; right?

0:02:29 18

0:02:30 19

A Yes.

0:02:30 20

Q That protocol was published as a Internet engineering task force RFC before you came up with your invention; right?

0:02:35 21

0:02:38 22

0:02:39 23

A I don't know.

0:02:40 24

Q You don't know?

0:02:41 25

A No.

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:02:41 1 Q Okay. Do you have any reason to doubt that  
:02:43 2 IMAP4 was available to the public before you came up  
:02:48 3 with your invention?  
:02:49 4 MR. BECKER: Object to form.  
:02:50 5 THE WITNESS: I don't know one way or the  
:02:51 6 other.  
:02:51 7 BY MR. STEPHENS:  
:02:52 8 Q Okay. You could use POP3 through a firewall,  
:03:01 9 right, before you came up with your invention?  
:03:10 10 A If you were outside the firewall and the server  
:03:13 11 was inside the firewall?  
:03:15 12 Q Yes.  
:03:16 13 A Only if -- if a firewall was configured to  
:03:19 14 allow that type of interaction, which I believe very,  
:03:23 15 very few, if any, were.  
:03:26 16 Q What is your basis for that belief?  
:03:28 17 A Just my experience in the industry. I never  
:03:31 18 did do a survey or anything like that.  
:03:33 19 Q What experience in the industry did you have  
:03:35 20 beyond your own personal use of the corporate VPN for  
:03:39 21 the company you were working for?  
:03:41 22 A Just experience of being in the industry.  
:03:46 23 Q What -- I guess I'm trying to probe that a  
:03:49 24 little further.  
:03:50 25 A Sure.

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:07:45 1 A On the reexam certificate?

:07:48 2 Q Yes.

:07:49 3 A Yes.

:07:50 4 Q What does it mean to generate first examination

:07:52 5 results from first version information which indicates

:07:55 6 whether a first workspace element has been modified?

:08:01 7 MR. BECKER: Object to form.

:08:02 8 And also caution you not to divulge the

:08:04 9 contents of any attorney-client communications on that

:08:08 10 subject.

:08:22 11 THE WITNESS: Well, with the same caveat that

:08:24 12 this -- the claims have legal language and all that, I

: 26 13 mean, I think to me what it says is to figure out

:08:30 14 whether something has changed.

:08:31 15 BY MR. STEPHENS:

:08:32 16 Q Is it possible to do synchronization without

:08:37 17 generating examination results from version information

:08:40 18 which indicates whether a workspace element has been

:08:44 19 modified?

:08:45 20 MR. BECKER: Object to form. Excuse me.

:08:53 21 BY MR. STEPHENS:

:08:53 22 Q And let me be clear, I'm talking about

:08:56 23 synchronizing workspace information, I don't mean just

:09:00 24 synchronizing your watch, for example.

:09:03 25 A Okay. I think you do need to know what has

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:09:22 1 changed.

:09:25 2 Q So is it your view, then, that it's not  
:09:27 3 possible to synchronize a workspace information without  
:09:30 4 generating examination results from version information  
:09:34 5 which indicates whether a workspace element has been  
:09:37 6 modified?

:09:45 7 A Okay. So to synchronize you need to know what  
:09:48 8 has changed. I read this and it does suggest to me  
:09:52 9 figuring out what has changed. Insofar as those are  
:09:57 10 like that, and those interpretations are accurate, I do  
:10:01 11 believe that you need to know what has changed in order  
:10:04 12 to synchronize.

: 05 13 Q So under that view, anything that synchronizes  
:10:08 14 workspace data would have to generate examination  
:10:11 15 results from first version information which indicates  
:10:14 16 whether a workspace element has been modified; right?

:10:18 17 MR. BECKER: Object, form.

:10:47 18 THE WITNESS: If I understand your question  
:10:48 19 correctly, you're asking me whether if you do not  
:10:51 20 perform this step B, can you synchronize without it?

:10:55 21 BY MR. STEPHENS:

:10:55 22 Q Yes.

:11:03 23 A Well, you need to know what has changed -- I go  
:11:07 24 back to that statement -- in order to be able to  
:11:10 25 synchronize. And -- but I'm reluctant to equate knowing



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:11:19 1 what has changed exclusively with the wording that is in  
:11:26 2 this particular claim.

:11:26 3 Q Well, what is it about the wording of the claim  
:11:28 4 that leads you to have that reluctance?

:11:32 5 A That it is a -- I know that these claims are  
:11:36 6 legal statements that have words with very precise  
:11:46 7 meaning construed by courts, and I am reluctant to  
:11:51 8 equate those without knowing the exact construction of  
:11:55 9 each of these terms and how they are interpreted by  
:11:58 10 others.

:11:59 11 Q Well, would it help you if I read to you  
:12:01 12 whatever interpretations the court has given to those  
:12:04 13 terms? What I'm really after here is your understanding  
:12:10 14 as the inventor of whether or not the things that are  
:12:13 15 recited in this description of one of your inventions  
:12:16 16 are required to do synchronization or whether there's  
:12:19 17 other ways to do synchronization of workspace data.

:12:25 18 MR. BECKER: Object to form.

:12:50 19 THE WITNESS: Okay. Let me try to give and  
:12:51 20 answer that I think -- I do believe that to perform  
:12:54 21 synchronization, you need to know what has changed.  
:12:57 22 That -- that is an element of that process. I do  
:13:02 23 believe that what it's talking about in here is a  
:13:06 24 methodology for figuring out what has changed.

:13:11 25 I cannot say whether it is the only methodology

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BY MR. STEPHENS:

Q Okay. And that's -- that's how it -- how it works in payload push; right?

A Well, I mean -- so stepping away from this language, I'll say in the payload push, we -- we look at it and we have the delta and we send it out.

Q Okay. And that's -- that sending the delta, the results of the examination through the firewall is what is the initiating step; right?

MR. BECKER: Object to form.

BY MR. STEPHENS:

Q Of step D?

A That's the sending it out, yes.

MR. STEPHENS: Okay. We need to take a break, so we can change the tape.

THE WITNESS: Okay.

VIDEOGRAPHER: This is the end of Videotape Number 3. We are now going off the video record. The time is 5:24 p.m.

(Recess Taken.)

VIDEOGRAPHER: This is the beginning of Videotape Number 4. We are now back on the video record. The time is 5:41 p.m.

BY MR. STEPHENS:

Q Mr. Mendez, we've talked quite a bit today

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5:41:12 1 about different e-mail protocols, SMTP, POP3, IMAP4, and  
5:41:20 2 MAPI, VIM; right?

5:41:23 3 A Yes.

5:41:24 4 Q Those are all different ways of transmitting  
5:41:26 5 e-mail; is that right?

5:41:33 6 A Well, they can all be used to exchange e-mail  
5:41:36 7 information, yes.

5:41:36 8 Q And they all store -- I should not put it that  
5:41:39 9 way -- they all represent e-mail in different formats;  
5:41:42 10 right?

5:41:43 11 MR. BECKER: Object, vague -- excuse me, form.

5:42:00 12 THE WITNESS: They all represent e-mail in  
5:42:00 13 different forms; again, internal representation of  
5:42:02 14 e-mail being different, I don't know.

5:42:06 15 BY MR. STEPHENS:

5:42:06 16 Q So I mean, SMTP represents an e-mail, the same  
5:42:14 17 e-mail, in fact, in a different way, in a different  
5:42:16 18 form, than POP3 does; right?

5:42:19 19 A When it's stored -- so SMTP, right, it  
5:42:22 20 transports the e-mail, and POP3 actually does have the  
5:42:26 21 storage of the e-mail pending at the post office. So  
5:42:31 22 they are serving different functions.

5:42:33 23 You know, all these things, like you mention,  
5:42:36 24 MAPI as well as VIM, and those are more APIs to interact  
5:42:40 25 with -- with data stores that may include storage of